

### § 1626.3

denied by the Department of Homeland Security (DHS) and is not subject to further administrative appeal.

(j) *Victim of severe forms of trafficking* means any person described at 22 U.S.C. 7105(b)(1)(C).

(k) *Victim of sexual assault or trafficking* means:

(1) *A victim of sexual assault* subjected to any conduct included in the definition of sexual assault in VAWA, 42 U.S.C. 13925(a)(29); or

(2) *A victim of trafficking* subjected to any conduct included in the definition of “trafficking” under law, including, but not limited to, local, state, and federal law, and T visa holders regardless of certification from the U.S. Department of Health and Human Services (HHS).

(1) *United States*, for purposes of this part, has the same meaning given that term in section 101(a)(38) of the INA (8 U.S.C. 1101(a)(38)).

[79 FR 30052, May 27, 2014]

### § 1626.3 Prohibition.

Recipients may not provide legal assistance for or on behalf of an ineligible alien. For purposes of this part, legal assistance does not include normal intake and referral services.

### § 1626.4 Aliens eligible for assistance under anti-abuse laws.

(a) Subject to all other eligibility requirements and restrictions of the LSC Act and regulations and other applicable law:

(1) A recipient may provide related legal assistance to an alien who is within one of the following categories:

(i) An alien who has been battered or subjected to extreme cruelty, or is a victim of sexual assault or trafficking in the United States, or qualifies for immigration relief under section 101(a)(15)(U) of the INA (8 U.S.C. 1101(a)(15)(U)); or

(ii) An alien whose child, without the active participation of the alien, has been battered or subjected to extreme cruelty, or has been a victim of sexual assault or trafficking in the United States, or qualifies for immigration relief under section 101(a)(15)(U) of the INA (8 U.S.C. 1101(a)(15)(U)).

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(2)(i) A recipient may provide legal assistance, including but not limited to related legal assistance, to:

(A) An alien who is a victim of severe forms of trafficking of persons in the United States; or

(B) An alien classified as a non-immigrant under section 101(a)(15)(T)(ii) of the INA (8 U.S.C. 1101(a)(15)(T)(ii)), regarding others related to the victim).

(ii) For purposes of this part, aliens described in paragraphs (a)(2)(i)(A) and (a)(2)(i)(B) of this section include individuals seeking certification as victims of severe forms of trafficking and certain family members applying for immigration relief under section 101(a)(15)(T)(ii) of the INA (8 U.S.C. 1101(a)(15)(T)(ii)).

(b) (1) *Related legal assistance* means legal assistance directly related:

(i) To the prevention of, or obtaining relief from, the battery, cruelty, sexual assault, or trafficking;

(ii) To the prevention of, or obtaining relief from, crimes listed in section 101(a)(15)(U)(iii) of the INA (8 U.S.C. 1101(a)(15)(U)(iii)); or

(iii) To an application for relief:

(A) Under section 101(a)(15)(U) of the INA (8 U.S.C. 1101(a)(15)(U)); or

(B) Under section 101(a)(15)(T) of the INA (8 U.S.C. 1101(a)(15)(T)).

(2) Such assistance includes representation in matters that will assist a person eligible for assistance under this part to escape from the abusive situation, ameliorate the current effects of the abuse, or protect against future abuse, so long as the recipient can show the necessary connection of the representation to the abuse. Such representation may include immigration law matters and domestic or poverty law matters (such as obtaining civil protective orders, divorce, paternity, child custody, child and spousal support, housing, public benefits, employment, abuse and neglect, juvenile proceedings and contempt actions).

(c) *Relationship to the United States*. An alien must satisfy both paragraph (c)(1) and either paragraph (c)(2)(i) or (ii) of this section to be eligible for legal assistance under this part.

(1) *Relation of activity to the United States*. An alien is eligible under this section if the activity giving rise to eligibility violated a law of the United

States, regardless of where the activity occurred, or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States.

(2) *Relationship of alien to the United States.* (i) An alien defined in §1626.2(b), (h), or (k)(1) need not be present in the United States to be eligible for assistance under this section.

(ii) An alien defined in §1626.2(j) or (k)(2) must be present in the United States to be eligible for assistance under this section.

(d) *Evidentiary support*—(1) *Intake and subsequent evaluation.* A recipient may determine that an alien is qualified for assistance under this section if there is evidentiary support that the alien falls into any of the eligibility categories or if the recipient determines there will likely be evidentiary support after a reasonable opportunity for further investigation. If the recipient determines that an alien is eligible because there will likely be evidentiary support, the recipient must obtain evidence of support as soon as possible and may not delay in order to provide continued assistance.

(2) *Documentary evidence.* Evidentiary support may include, but is not limited to, affidavits or unsworn written statements made by the alien; written summaries of statements or interviews of the alien taken by others, including the recipient; reports and affidavits from police, judges, and other court officials, medical personnel, school officials, clergy, social workers, other social service agency personnel; orders of protection or other legal evidence of steps taken to end abuse; evidence that a person sought safe haven in a shelter or similar refuge; photographs; documents; or other evidence of a series of acts that establish a pattern of qualifying abuse.

(3) *Victims of severe forms of trafficking.* Victims of severe forms of trafficking may present any of the forms of evidence listed in paragraph (d)(2) of this section or any of the following:

(i) A certification letter issued by the Department of Health and Human Services (HHS).

(ii) Verification that the alien has been certified by calling the HHS traf-

ficking verification line, (202) 401-5510 or (866) 401-5510.

(iii) An interim eligibility letter issued by HHS, if the alien was subjected to severe forms of trafficking while under the age of 18.

(iv) An eligibility letter issued by HHS, if the alien was subjected to severe forms of trafficking while under the age of 18.

(e) *Recordkeeping.* Recipients are not required by §1626.12 to maintain records regarding the immigration status of clients represented pursuant to this section. If a recipient relies on an immigration document for the eligibility determination, the recipient shall document that the client presented an immigration document by making a note in the client's file stating that a staff member has seen the document, the type of document, the client's alien registration number ("A number"), the date of the document, and the date of the review, and containing the signature of the staff member that reviewed the document.

(f) *Changes in basis for eligibility.* If, during the course of representing an alien eligible pursuant to §1626.4(a)(1), a recipient determines that the alien is also eligible under §1626.4(a)(2) or §1626.5, the recipient should treat the alien as eligible under that section and may provide all the assistance available pursuant to that section.

#### § 1626.5 Aliens eligible for assistance based on immigration status.

Subject to all other eligibility requirements and restrictions of the LSC Act and regulations and other applicable law, a recipient may provide legal assistance to an alien who is present in the United States and who is within one of the following categories:

(a) An alien lawfully admitted for permanent residence as an immigrant as defined by section 101(a)(20) of the INA (8 U.S.C. 1101(a)(20));

(b) An alien who is either married to a United States citizen or is a parent or an unmarried child under the age of 21 of such a citizen and who has filed an application for adjustment of status to permanent resident under the INA, and such application has not been rejected;